

BOARD OF APPEALS CASE NO. 5334

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BEFORE THE

APPLICANT: Lambdin Development LLC

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to allow a day
care center in the Agricultural District;
2219 Churchville Road, Churchville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 3/19/03 & 3/26/03

HEARING DATE: April 28, 2003

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Record: 3/21/03 & 3/29/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Lambdin Development LLC, is requesting a special exception pursuant to Section 267-53C(4) of the Harford County Code, to allow a day care center in an AG/Agricultural District.

The subject parcel is located at 2219 Churchville Road, east of Thomas Run and Shucks Roads and is more particularly identified on Tax Map 42, Grid 3B, Parcel 516, Lot 1. The parcel consists of 8.485± acres, is split zoned AG/Agricultural and B2/Community Business District, and is entirely within the Third Election District.

Mr. James Lambdin appeared on behalf of the Applicant, Lambdin Development, LLC. Mr. Lambdin indicated that the parcel abuts a parcel presently zoned B-3. His company develops real estate and he is the managing partner. The company plans to construct an 8650 square foot center hall building that will be leased by the LaGuardia Company t/a LaGuardia Child Care Center. La Guardia will operate a day care center on the property.

Ms. Maude Crevecoeur appeared and testified that she will be the center's director. She will be on-site 5 days per week and the center will employ 30 employees serving 152 children. The witness described her qualifications as a child care center director and described the center's mission as providing a stimulating pre-school environment with a lunch program. The hours of operation will be 6:30 a.m. until 7:00 p.m.

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Mr. Kenneth Schmid appeared and qualified as a traffic engineer. The proposed use is located on MD Route 22, Churchville Road which is a major arterial road. The proposed site is within the development envelope. His traffic study indicated that the current level of service on this road is level “D” and that level will not be unfavorably altered by the traffic generated by the proposed use. A traffic impact study could later indicate that some road improvements could be required by the developer but that determination has not been made yet. The witness indicated that the final approval probably will require both deceleration and acceleration lanes be provided by the developer as part of the property development. The traffic study and resulting road improvements will be reviewed by Harford County as part of the final site plan and development review.

Mr. David Taylor appeared and qualified as an expert engineer. Mr. Taylor described the parcel as split zoned with the zoning division bisecting the property between AG/Agricultural located to the front along Route 22 and B2/Community Business to the rear. The day care center will be located on the AG zoned portion of the property. The parcel is approximately 8.5 acres and adjoins the property where the K-Bitner restaurant is presently located. There are mixed uses in the immediate area including the K-Bitner restaurant, produce stand, gas station, McDonald’s restaurant and the Harford Community College property. The child care center will have a playground to the rear of the property. In the opinion of Mr. Taylor, the proposed use is compatible with other similar uses in the immediate neighborhood. All of the specific statutory requirements of the Code are met by the proposal and there are no facts, in his opinion, that indicate that this use would be incompatible with or result in adverse impacts to adjoining or neighboring properties or uses thereon. Mr. Taylor further opined that the proposed use at the proposed location was consistent with generally accepted engineering principles and practices.

Mr. Anthony McClune appeared as Chief of Current Planning for the Harford County Department of Planning and Zoning (Department). The Department concluded that the Applicant’s proposal can meet or exceed each and every requirement of the Harford County code. Mr. McClune examined the proposal in light of the Limitations, Guides and Standards set forth in Harford County Code Section 267-9I and concluded that there were no adverse impacts that would result from this proposal and use. The witness did indicate that a traffic study will need to be provided so that any road improvements that may be necessary as a result of the proposed development can be evaluated and included in the final plan.

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Mr. McClune stated that approval of the use would be consistent with generally accepted planning and zoning principles and practices.

CONCLUSION

The Applicant is requesting a special exception pursuant to Section 267-53C(4) of the Harford County Code, to allow a day care center in an AG/Agricultural District.

The applicable sections of the Harford County Code are as follows:

Section 267-51. Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

Section 267-52. General regulations.

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.

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Section 267-53C(4) Day-care centers.

- (a) These uses may be granted in the AG, RR, R, R1, R2, R3, R4 and VR Districts, provided that:
- [1] A minimum parcel area of one-half acre is established.
 - [2] Access to the facility shall be from an arterial or collector road, with all outdoor play areas located in a solid-fenced or screened area in the rear of the building.
 - [3] The operation may be conducted in a previously existing structure, or, if a new structure is constructed, the architecture of the building shall be harmonious with other architecture within the neighborhood.
 - [4] If the operator of a day-care center operated in a church, private school or public school has obtained a zoning certificate under the provisions of § 267-26D(12) of this chapter, the day-care center is exempt from the requirements of this Subsection C(4).

The Hearing Examiner concludes that the proposed use meets each requirement for such a use set forth in the Harford County Code regarding such facilities. In addition to meeting the particular standards of the Code, Maryland Courts have established criteria that must be met in each special exception case before approval may be granted. The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring

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area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

Applying the principals set forth by the *Schultz* Court, the Hearing Examiner concludes that the proposed use at the proposed location will have no adverse impacts greater than or different than a similar use located elsewhere in the zone.

Based on the foregoing, the Hearing Examiner recommends approval, subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections
2. The Applicant shall prepare and submit a traffic impact study for review and approval.
3. The Applicant shall prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC).
4. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval with the site plan.

Date MAY 21, 2003

William F. Casey
Zoning Hearing Examiner